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PATENT  
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NO. 61944

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Coppens et al.  
Serial No.: 08/898,736  
Filed: July 23, 1997  
Title: PROCESS FOR THE  
PREPARATION OF MALTED  
CEREALS  
Group Art Unit: 1761  
Examiner: C. Sherrer

DECLARATION OF THEO COPPENS UNDER 37 C.F.R. 1.132

Honorable Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

Dear Sir:

I, Theo Coppens, pursuant to 37 C.F.R. 1.132, declare as follows:

1. I am one of the inventors for the above-identified patent application.
2. I am familiar with the Gyllang et al. reference cited by the Examiner in an Office Action mailed December 18, 1998 in the above-identified patent application. I asked Prof. C. Michiels, Professor of the Faculty of Agricultural and Applied Biological Sciences at Katholieke Universiteit Leuven in Belgium, to conduct the following experiments under my supervision to determine whether the medium and growth conditions described in Gyllang et al. would provide activated spores.

3. Preparation of Spore Suspension. *Rhizopus oryzae* ATCC 9363, *Aspergillus fumigatus* CBS 148.89, and *Aspergillus*

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*amstelodami* VTT D-76035 were each grown in a tissue culture flask containing 225 ml of 2% peptone (w/v, Unipath, Hampshire, United Kingdom), 1% yeast extract (w/v, Unipath, Hampshire, United Kingdom), and 2% dextrose (w/v, VEL, Leuven, Belgium) medium without agar (pH-ca. 6.4). The medium for in the tissue culture flask was inoculated with a loopfull of material taken from a 7 day old sporulating culture grown on Potato Dextrose Agar at 28°C. After incubation for 3 weeks at 20°C the spores were homogenized by vigorous shaking.

4. Spore Analysis. The spores in the homogenate were observed microscopically at 0 time under the procedure of Gyllang et al. Three different samples of 0.2 ml of the spore homogenate were examined by means of a Thoms counting chamber at magnification of 320x (Zeiss microscope). At least 100 spores per sample were evaluated. Swelling of spores was verified at a magnification of 1250x by means of an eyepiece graticule micrometer.

Further, although it is not taught nor was it contemplated by the procedure of Gyllang et al., some spores in the homogenate were observed microscopically after 6 hours of incubation at 20°C or 42°C. Results were as follows.

Microorganism	20°C		42°C	
	0 Time	6 hours	0 Time	6 hours
<i>Rhizopus oryzae</i>	0	0	0	0
<i>Aspergillus fumigatus</i>	0	0	0	0
<i>Aspergillus amstelodami</i>	0	3	0	0

The 3% value for *Aspergillus amstelodami* at 20°C for 6 hours is within experimental error and is insignificant. Hence, the

The composition of the medium is further described by Kaiser et al., *Methods in Yeast Genetics*, Appendix A, p. 207, Cold Spring Harbor Laboratory Press, New York, USA, 1994.

medium and growth conditions described in Gyllang et al. did not provide activated spores.

The undersigned, being warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. §1001) and may jeopardize the validity of the application or any patent issuing thereon, hereby declares that the above statements made of my own knowledge are true and that all statements made on information and belief are believed to be true.

Date: \_\_\_\_\_

09/22/99

  
Greg Coppens**OFFICIAL**